IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Crl.Appeal No.195-DB of 2004.

Date of decision: 20.2.2007.

Gurtej Singh alias Babbi

.....Appellant

v.

State of Punjab

.....Respondent.

CORAM: HON'BLE MR.JUSTICE UMA NATH SINGH.
HON'BLE MR.JUSTICE A.N. JINDAL.

Present:- Mr.Nandan Jindal,Advocate for the appellant.
Ms.Reeta Kohli,Deputy Advocate General,Punjab.

Uma Nath Singh,J.

This criminal appeal arises out of a judgment dated 21.8.2003 passed by learned Additional Sessions Judge, Sangrur, in Sessions Case No.17 of 16.4.2002 holding the accused appellant, Gurtej Singh @ Babbi, aged about 22 years, guilty of offences under Sections 346 IPC, 363 IPC, 366 IPC, 376 IPC and 506 (Part-II) IPC and sentencing him to undergo RI for one year on the first count, RI for 5 years with a fine of Rs.1000/- with a direction to further undergo RI for a period of two months in case of default of payment of fine on the second count, RI for 7 years with a fine of Rs.5000/-, with a direction to further undergo RI for six months in case of default of payment of fine on the third count, RI for 13 years with a fine of Rs. 20,000/-, with a direction to further undergo RI for one year in case of default of payment of fine on the fourth count, and RI for two years on the fifth count. All the sentences were directed to run concurrently.

The brief facts of the prosecution case are that on 21.1.2002,

Jarnail Singh (PW5), maternal uncle of the prosecutrix, gave a statement to the police that he is a resident of Village Dhandiwal and is doing agriculture work. His elder sister Gurmit Kaur was married to one Mithu Singh, Jat of Sultanpur, about 20/22 years back. She has three children namely two sons, and one daughter, born in that wedlock. The girl child Rani is the youngest issue and her age was about 13/14 years at the time of offence. About 7 years back, his brother-in-law, Mithu Singh, had expired, and his sister used to look after his business thereafter. On 20.1.2002, in the evening, his sister came to his Village Dhandiwal and disclosed to him that her daughter Rani was missing from the house since the evening of 19.1.2002. On that information, he accompanied his sister to her Village Sultanpur and narrated the whole incident to Sher Singh, the elder brother of his Brother-in-Law Mithu Singh. Thereafter both of them started search of the girl in the nearby places, and also at the places of their relatives. On the date of report i.e. 21.1.2002 at about 4 PM, they came to know that their niece Rani had been enticed and induced, and had been taken away by Gurtej Singh alias Babbi, son of Gurnam Singh, Majbi Sikh, who was working as Siri with Jagsir Dass, son of Baldev Dass Mahant, in Village Sultanpur. He had kept her in a room constructed in the field of said Jagsir Dass. They also narrated the episode to respectable members of the Panchayat, namely Sadhu Singh, Lakha Singh, and Sukhdev Singh, and took them to the field of Jagsir Dass where the accused having seen them approaching there ran away in the fields. They opened the room constructed in the field which was closed. On entering the premises, the complainant noticed his niece Rani in a terrified and perturbed condition. She told them that she had been enticed and induced and taken to the fields by Gurtej

Singh @ Babbi on the evening of 19.1.2002, and he had kept her confined forcibly in the room, and during nights he used to commit rape upon her. He also used to threaten her with death in case she would try to raise raula or ran away from there. Jagsir Dass, owner of the room and field, however, had no knowledge about that. The complainant having left his niece, who was in a terrified and perturbed condition, in the house of his sister Gurmit Kaur set out with his relative Sher Singh to give information to the police, but since on the way, the SHO had met him, he made a report to him. The statement of the complainant was read over to him which he found to be correct. Accordingly, the police registered FIR No.3 dated 21.1.2002 under Sections 376/363/366-A and 342 IPC at PS Sherpur. The prosecutrix was medically examined on 22.1.2002 and her vaginal swabs were taken, and a parcel thereof was prepared and sent for chemical examination to FSL Chandigarh. The accused was arrested on 31.1.2002 and was medically examined on 2.2.2002. Dr. Gurpreet Singh (PW3) who medically examined the accused could find nothing to suggest that he was incapable of doing sexual intercourse. After completion of investigations, and collection of incriminating materials against the accused, a challan was presented before the trial Court.

We have heard learned counsel for the parties and perused the record. At the outset, learned counsel for the appellant submitted that he does not want to assail the order of conviction, and he pleaded only for reduction of sentence, in the facts and circumstances of the case. Notwithstanding the stand taken by the learned counsel, we have examined the case on merit before reaching the conclusions. The prosecution has produced as many as 10 witnesses. Dr. Narinder Singh, (PW1), was posted

as Medical Officer, Civil Hospital, Sangrur, on 22.1.2002. He had examined the prosecutrix, Rani, and found that she was conscious, cooperative and well oriented to time and place. He did not find any external mark of violence on her person. However, her hymen was found to be ruptured, and showed the marks of old healed tears. According to the prosecutrix, she had started menstruating on 21.1.2002, a day before her medical examination. Her vaginal bleeding was present. Her pubic hair, vaginal scrapping and vaginal swabs were taken, sealed, and handed over to the police for chemical examination. Her clothes being salwar and kameej were sealed and handed over to the police for chemical examination. The MLR was marked as Ex.PA. He conducted the medical examination of the prosecutrix on an application (Ex.PB) moved by the police. He has stated that if the prosecutrix was not agreeable to sexual intercourse, then, generally, injury marks may have been present on her body. There was no mark of recent injury on her person, nor was there any swelling in her vagina at the time of examination. According to him, the duration of the old healed tear of hymen was one week or more. The Doctor further stated that the age of the prosecutrix was mentioned in the medical report, on the basis of police statement and also on her own statement. The Doctor replied that he had not referred the case for any x-ray examination or ossification test for determination of the age of the prosecutrix. Further, from the medical reports, the Doctor has given the opinion that the prosecutrix might have consented to go for sexual intercourse. However, he has denied a defence suggestion that he gave a false report at the instance of the complainant party and the police. Avtar Singh, (PW2), is the village Patwari. He prepared a scaled map (Ex.PW2/A) of the spot on being pointed by the

complainant. In the cross examinations, he has denied that he had prepared a wrong site plan under the pressure of police. Thus, the evidence of Patwari, supports the prosecution case regarding the site of incident. Dr.Gurpreet Singh Nagra, (PW3), was posted as Medical Officer, PHC Sherpur, on 1.2.2002. He had medically examined accused Gurtej Singh on an application (Ex.PW3/A) and noted his age to be 19 years. He gave his opinion vide Ex.PW3/B whereon he also noted "nothing suggests that he is incapable of doing this act." On a further request by the police (Ex.PW3/C), he gave the opinion that he had not found any fresh mark of injury external or internal on the person of the accused, Gurtej Singh. In his cross examinations, he has stated that had the prosecutrix not agreed to go for sexual intercourse, then generally as a mark of resistance there may have been presence of some injury marks on the body of the accused. However, he did not notice any such injury on the person of the accused.

Rani, (PW-4) is the prosecutrix. While narrating the incident in her statement before the Court she has stated that she used to visit the house of one Krishna her neighbourer to learn embroidery works, where accused Gurtej Singh, cousin brother of said Krishna, used to come. The accused was anxious to meet her, and on 19.1.2002, he had come to her house in the evening. She was all alone in the house. The accused had told her that he was staying alone in a room of Jagsir Dass in a field, where he was working as a Siri. He had promised the prosecutrix to give some memorable gift if she would come to that place. The prosecutrix did not inform any of her family members and went to visit that room of Jagsir Dass. The accused instead of giving her gift overpowered her, threatened her to be killed, and thereafter raped her repeatedly. He had kept her confined in a room for

three days, and raped her repeatedly. On the third day, some respectables of her village with her maternal uncle Jarnail Singh(PW5) and paternal uncle Sher Singh (not examined) had come there, and rescued her. On seeing them the accused had fled away from the spot and the prosecutrix narrated the entire story to both her uncles. The accused had committed sexual intercourse with her without her consent or will and under threat to her life, and in the day time he used to cover her with a quilt. She stated that her age was 14½ years at the time of her statement. She also stated that at the time of incident she was studying in 5th class. In her cross-examinations, she has stated the age of her mother as 35 years, and has denied a defence suggestion that her mother was aged about 40 years. She has further stated that her eldest brother was 18½ years and the elder one was two years younger to the eldest. She was four years younger to her eldest brother. She has emphatically denied a defence suggestion that her age was 18/19 years on the date of cross-examinations. She has further stated that she had known the accused for the past about one month when she used to go to the house of his cousin sister, Krishna, to learn embroidery. The accused would visit that place and would be normal in talking to her like brother and sister. He was working as a Siri (Labourer) with one Jagsir Dass. She has denied a defence suggestion that in her police statement she has mentioned that she was on friendly terms with the accused. She has also denied to have been meeting the accused. She had been going to the house of Krishna only for about one month to learn embroidery. The accused had never met her personally in the house of Krishna. The field of Jagsir Dass was situated outside the village abadi at a distance of 2-3 miles. On 19th , the accused had come alone to her house at

4.30 PM, and had told her to reach the field of Jagsir Dass where he would give her gift. She was alone in her house and her family members were not present. She believed in the assurance of the accused and went to that field. She was confined in the field of Jagsir Dass for two days. There was a single room of three KHUNS. A motor machine was installed in a separate room. She was not aware as to who used to supply them meals in the field. She would raise alarms during the acts of rape but the accused used to threaten her. She would resist, grapple and even slap the accused to save her honour but he always overpowered her. He used to throw her on the floor of the room and commit rape. Even then, she would try to save her honour from the accused.

Jarnail Singh (PW5) is the maternal uncle of the prosecutrix. He is the author of the FIR. He has verified the statement given to the police (Ex.PW 5/A). In his cross examinations he has denied a defence suggestion that his narration of incident is only based on hearsay. He came to know the place where the girl had been kept confined only from some resident of Village Sultanpur. He has also stated that on the birth of the prosecutrix an entry to that effect had been got recorded with the village Chowkidar. Maghar Singh (PW6) was a Teacher at Government Primary School, Sultanpur. He produced the attendance register of the year 1995. As per entry against Sr.No.1207 dated 25.5.1995, the date of birth of the prosecutrix Rani was mentioned as 15.2.1988. Her caste was noted as Jat. He has stated that the said entry was made by one Gurdev Singh, a JBT teacher, and he verified his signatures. He has admitted to have issued a certificate in that regard (Ex.PW 6/A).

Gurtej Singh (PW7) was posted as Moharrir Head Constable at

Police Station Sherpur. He tendered his evidence on affidavit (Ex.PW 7/A). Satpal Singh (PW8) was posted as Constable, PS Sherpur. He also tendered his evidence on affidavit (Ex.PW8/A). Sub Inspector Gurbans Singh (PW9) was posted as SHO, PS Sherpur on 21.1.2002. He had recorded the statement (Ex.PW5/A) of Jarnail Singh (PW5). On that basis, FIR (Ex.PW 9/A) was registered by ASI Gurmit Singh. He proved the FIR and all the exhibits relating to him. He also proved the rough site plan (Ex.PW9/B), which he had prepared with correct marginal notes. He has verified his request letter (Ex.PB), for medical examination of the prosecutrix whereby she had been sent under the supervision of ASI Jagdip Singh to Civil Hospital, Dhuri, for medical examination. On 28.1.2002, he had recorded the statement of Pritam Singh. After completion of investigation and receipt of Chemical Examiner's report he had put up a challan against the accused. In his cross examinations he has stated that he had prepared the site plan at the instance of and on pointing out by the prosecutrix Rani. He has also clarified that a cot was lying there. The windows of the room on the place of occurrence were supported by window panes and they had been closed due to winter season. ASI Jagdeep Singh (PW 10) was a member of the police party headed by SI Gurbans Singh (PW9). In his presence, complainant Jarnail Singh had given his statement (Ex.PW5/A) which he signed after it had been read out to him. On the basis of that statement, an FIR (Ex.PW9/A) was registered at the Police Station. He has also supported the investigating officer regarding spot inspection and drawing of a rough site plan. He had also accompanied the prosecutrix to Civil Hospital, Sangrur, for medical examination. On completion of examinations, the concerned Doctor had handed over a sealed envelope and two sealed parcels

bearing seal impression 'NSP' alongwith sample seal. On return to the police station, he had handed over the parcels and envelope to the Moharrir Head Constable of Police Station, Sherpur. On completion of medical examinations, the prosecutrix was handed over to her mother in the presence of Sher Singh and Jarnail Singh vide memo Ex.PW5/B, by this witness. He had arrested accused Gurtej Singh on 31.1.2002 and taken his personal search. An arrest memo (Ex. PW 10/C) of accused Gurtej Singh was prepared. On 1.2.2002, he had taken the accused to Civil Hospital, Sherpur, for medical examination. After medical examination, the accused had been produced in the Court of JMIC, Dhuri, who sent him to police custody. During investigations he had recorded the statements of prosecution witnesses and after completion of investigation a challan was put up against the accused by SI Gurbans Singh. In his cross examinations, PW10 has stated that he had submitted an application to the Doctor for ossification test of the prosecutrix, but on that day the Doctor was not present.

The accused in his statement under section 313 Cr.P.C., pleaded innocence and alleged false implication. He denied to have committed any offence.

From the analysis of the aforesaid evidence, it is clear that the prosecutrix Rani was enticed away by the accused on 19.1.2002 and was recovered on 21.1.2002 at 4 PM as per site plan (Ex.PW 2/1) prepared by Patwari Avtar Singh. There was no delay in giving the statement to the Police. Jarnail Singh (PW5), maternal uncle of the prosecutrix, being accompanied by her paternal uncle Sher Singh (not examined) and other co-villagers had recovered the prosecutrix from the room of the accused. Her

medical examination was conducted by PW1 vide MLR Ex.PA on 22.1.2002. Her hymen was found to be ruptured with one week old healed tears, and though there was no mark of external violence but the fact remains that she was a minor on the date of offence. Her statement giving minute details including the age of her mother, two elder brothers and of her own, and further the admission register produced by Maghar Singh (PW6) showing her date of birth as 15.2.1988 noted at Sr.No.1207 dated 21.5.1995 proved that she was a minor on the date of incident. Jarnail Singh (PW5) gave his statement (Ex. PW5/1) immediately to the SHO. The accused had fled away from the place of offence having seen complainant Jarnail Singh (PW5) and the co-villagers of the prosecutrix and thereafter, he was arrested later only on 31.1.2002. His medical examination was conducted by Dr. Gurpreet Singh Nagra (PW3), vide his report (Ex.PW3/B) and he specifically noted that there was nothing to suggest that the accused was incapable of doing sexual intercourse. Prosecutrix Rani (PW4) in her Court statement has repeatedly stated that the accused had enticed her away on the pretext of giving her some memorable gift. She was a minor on that day and the accused was always anxious to meet her. The accused had visited her house on 19.1.2002 when she was all alone. Instead of giving her gift in his room, he had overpowered her and under persistent threat had committed repeated sexual intercourse with her. She has clarified that as the window panes of the room were closed during winter, her noise could not come out. She has also stated that she had resisted and even slapped the accused but he had always overpowered her and committed sexual intercourse by throwing her on ground. As she has stated that she was under constant threat, absence of external injury marks on her body or

absence of abrasions or scratches on the person of the accused has become immaterial. Her statement is fully corroborated by the statement of Jarnail Singh (PW5) and it is vice versa. Jarnail Singh, (PW5), has verified his statement given to the police. His version as such is also proved by the statement of SHO Gurbans Singh (PW9) who had recorded it. The FIR recorded on that basis had been scribed by SI Gurmit Singh, which the SHO has proved. The SHO has also proved all the documents/exhibits like rough site plan (Ex.PW9/B), and further has verified the statements of witnesses recorded by him during investigations. The testimony of ASI Jagdeep Singh (PW 10) has also lent corroboration to the statements of Jarnail Singh (PW5) and SHO Gurbans Singh (PW9). He was present when the statement of prosecution witness Jarnail Singh had been recorded. This witness had sent the prosecutrix for ossification test but since the Doctor was not available, it could not be done. It has also come in the evidence of Jarnail Singh (PW5) that at the time of birth of the prosecutrix, her date of birth was entered into the record of the Village Chowkidar. Thus, the date of birth of the prosecutrix is proved by her statement, statement of Jarnail Singh (PW5), and the statement of Maghar Singh (PW6) who produced the relevant entry of school register.

From a further elucidation of the evidence on record, we notice that the prosecutrix was wrongfully confined in a room as indicated in the site plan with an intention that her confinement would not be known to anyone interested in her or to any public servant, and further the said place was also not within the knowledge of the complainant side, being a secret place. Thus the offence under Section 346 IPC is proved. However, as it has also come in evidence that the prosecutrix was induced by deceitful

means and pursuant thereto she being a minor was moved from her place, the ingredients of Section 361 IPC would be attracted, and it would constitute the offence of kidnapping punishable under Section 363 IPC. Further, she being a minor was enticed away, and was subjected to repeatedly sexual intercourse by the accused. Thus, this act is covered under Section 366 IPC. As the prosecutrix was repeatedly raped by the accused which is evidenced by the testimonies of the prosecutrix, the doctor, and other witnesses, apart from medical report and FIR corroborating it, the offence is covered under Section 376 IPC. The accused also threatened the prosecutrix with dire consequences in order to prevent her from raising alarms during sexual intercourse, and hence the offence under Section 506 IPC is additionally proved. Thus, the impugned judgment of conviction does not call for any interference, and it is hereby affirmed.

As regards the quantum of sentence, learned counsel for the appellant submitted that the accused was only of 19 years of age at the time of offence, and he is lodged in Jail since the date of arrest i.e. 31.1.2002. However he has completed only 5 years of sentence, and the learned counsel for the parties are not in position to inform the Court about the exact period of sentence with remissions undergone by the accused appellant so far. Under the circumstances, we deem it expedient in the interest of justice to reduce the jail sentence of the appellant from 13 years RI to 10 years RI under Section 376 IPC. The other sentences including the fine amounts on various counts shall remain intact. With the aforesaid modification in the period of sentence under Section 376 IPC, the appeal is hereby dismissed.

(Uma Nath Singh)
Judge

February 20 ,2007. **(A.N.Jindal)**
joshi **Judge**